The decision in the instant case is out of line with the weight of authority and the opinion of leading text writers on real property; and, furthermore, it is interesting to note that there was a strong dissenting opinion supported by two of the five judges sitting at the trial.

See 2 MINOR, INSTS., 201; 1 MINOR, REAL PROP., § 391; TAYLOR, LANDL. & TEN., § 469.

MASTER AND SERVANT—MASTER LIABLE FOR NEGLIGENCE OF TRUCK DRIVER RETURNING FROM PERSONAL ERRAND TO RE-ENGAGE IN MASTER'S BUSINESS. —A master ordered the driver of a motortruck to go from a mill to the freight yards. After the truck was loaded, the driver discovered some pieces of waste wood and took them to the house of his sister, a few blocks in the opposite direction from the mill. After unloading the wood at the house of his sister the driver started to return to the mill on a course which would take him past the entrance to the mill, and on his way to the freight yards. He negligently ran down an infant in the space between his sister's house and the entrance to the mill. A suit for damages was brought for the infant against the master, upon the grounds that during the return, the freight yards then being the driver's destination, the driver was upon the master's business. *Held*, the master is liable. *Riley* v. *Standard Oil Co. of New York* (N. Y.), 132 N. E. 97 (1921).

It is the well established general rule that the master is liable only for the acts of his servant done "within the scope of his employment". And where a servant, while engaged in his master's service, temporarily departs therefrom, the master is not liable for his acts during such time of departure. *McCarthy* v. *Timmins*, 178 Mass. 378, 59 N. E. 1038, 86 Am. St. Rep. 490 (1901); *Savannah Electric Co.* v. *Hodges*, 6 Ga. App. 470, 65 S. E. 322 (1909); *Symington* v. *Sipes*, 121 Md. 313, 88 Atl. 134, 47 L. R. A. (N. S.) 662 (1913). But the courts have frequently recognized the rule that where the servant has made a temporary departure from the service of the master, and the object of that departure has been accomplished and the servant re-engages in the discharge of his duty, the responsibility of the master for the servant's acts immediately attaches. *Gerarty* v. *National Ice Co.*, 16 N. Y. App. Div. 174, 44 N. Y. S. 659, affirmed 160 N. Y. 658, 55 N. E. 1095 (1897); *Missouri, etc., R. Co.* v. *Edwards* (Tex. Civ. App.), 67 S. W. 891 (1902); *Barmore* v. *Vicksburg, etc., R. Co.*, 85 Miss. 426, 38 So. 210, 3 Ann. Cas. 594, 70 L. R. A. 627 (1905).

In some jurisdictions, however, this doctrine is not followed because the courts deemed it unjust to hold the master liable. *Fleischner* v. *Durgin*, 207 Mass. 435, 93 N. E. 801, 20 Ann. Cas. 1291, 33 L. R. A. (N. S.) 79 (1911); *Hartnett* v. *Gryzmish*, 218 Mass. 258, 105 N. E. 988 (1914); *Patterson* v. *Kates*, 152 Fed. 481 (1907).

In the instant case the Court, upon review, followed the general rule noted above and held that with the journey back to the mill begun, the driver again engaged in the master's business, and this point was not necessarily the place from whence the deviation began. There is abundant authority for this view, and it is generally followed by the

better reasoned cases. *Jones* v. *Weigand*, 134 N. Y. App. Div. 644, 119 N. Y. S. 441 (1909); *Bogorad* v. *Dix*, 172 N. Y. S. 489 (1918); *Pierce-Fordice Oil Ass'n* v. *Brading* (Tex. Civ. App.), 212 S. W. 707 (1919).

There seems to be no case in Virginia involving this particular point.

PRINCIPAL AND AGENT—UNAUTHORIZED AGENT—ACTS, DECLARATION AND CONDUCT OF AGENT ALONE DO NOT ESTABLISH AGENCY.—The plaintiff employed an agent to conduct his garage business during his absence of a few days. The agent, by representing himself as the plaintiff's agent, disposed of an automobile to the defendant at a sum ridiculously less than the regular selling price. The agent requested the defendant to make the check payable to him, which the defendant did, and the agent decamped with the proceeds. Upon the plaintiff's return, he learned of the transaction and demanded of the defendant the possession of the automobile. After being refused, the plaintiff brought an action for the recovery of the car. *Held*, plaintiff could recover. *Robertson* v. *C. O. D. Garage Co.* (Nev.), 199 Pac. 356 (1921).

The relation of principal and agent cannot be established by the acts, declaration and conduct of the alleged agent. *Mathes* v. *Switzer Lumber Co.*, 173 Mo. App. 239, 158 S. W. 729 (1913); *Salmon Falls Bank* v. *Leyser*, 116 Mo. 51, 22 S. W. 504 (1893); *Waverly Timber & Iron Co.* v. *St. Louis Cooperage Co.*, 112 Mo. 383, 20 S. W. 566 (1892). One who acts and relies on the word of another, who represents himself to be the agent of a third person, does so at his own peril. *Lippincot* v. *East River Mill & Lumber Co.*, 79 Misc. Rep. (N. Y.) 559, 141 N. Y. Supp. 220 (1913); *Baker* v. *Seward*, 63 Ore. 350, 127 Pac. 961 (1912); *Blair* v. *Sheridan*, 86 Va. 587, 10 S. E. 414 (1889). The principal is never bound when the person dealing with an agent knows, or has reasonable grounds to know, that the agent is exceeding his authority, or perpetrating a fraud. *Ryan & Miller v. Am. Steel & Wire Co.*, 148 Ky. 481, 146 S. W. 1099 (1912); *Lee* v. *Vaughn Seed Store*, 101 Ark. 69, 141 S. W. 496, 37 L. R. A. (N. S.) 352 (1911). The great weight of authority is that mere possession alone does not give authority to sell. *Staunton* v. *Hawley*, 193 App. Div. 559, 184 N. Y. Supp. 415 (1920); *Smith* v. *Clews*, 114 N. Y. 190, 21 N. E. 160, 4 L. R. A. 392, 11 Am. St. Rep. 627 (1889); *Levi* v. *Booth*, 58 Md. 305, 42 Am. Rep. 332 (1882).

The fact that an agent was representing his principal in a certain territory to sell a certain make of automobile, and that the agent had been seen in the territory on many previous occasions with a car of another make, was not sufficient to clothe the agent with apparent authority to sell a car, of the latter make in such territory. *Pierce* v. *Fioretti*, 140 Ark. 306, 215 S. W. 646 (1919).

The owner of personal property may recover it, or its value from third persons who have purchased it from an agent who has neither express nor implied authority to sell, unless the person disposing of it has been invested by the owner with indicia of title or clothed with apparent authority to make the disposition. *Davidson* v. *Farrow Mercantile Co.*, 13 Ala. App. 614, 68 So. 602 (1915).